

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 868 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KADARBHAI J SUTHAR

Versus

DIVISIONAL CONTROLLER

Appearance:

MR BB NAIK for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/09/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. B.B. Naik for the petitioner and learned Advocate Mr. H.C. Raval on behalf of the respondent.

The petitioner has challenged the part of the award rendered by the Labour Court, Ahmedabad dated 11th May, 1990 in the proceedings of Reference (LCA) no.542/87.

That vide impugned order and judgment, the learned Presiding Officer, Labour Court has reinstated the present petitioner on his original post but without backwages. That the petitioner being aggrieved with the said part of the order of disallowing the backwages has challenged that part of the award by filing the present petition.

The petitioner-Kadarbhai J. Suthar was the driver of the respondent-Corporation and on 20-3-1985 he was discharging duties on the bus no.GRR-9004 for the route from Modasa to Udwana. That when the said bus was passing through Megharaj town near Power House, petrol pump, it met with an accident. One boy who was trying to cross the road hit with the bus and sustained bodily injuries to which he subsequently succumbed.

On account of said accident, the petitioner was charge-sheeted for being careless and negligent while discharging his duties and enquiry was held vide Default Case no.98/1985. It appears from the record that the Enquiry Officer after considering the material produced before him held the petitioner guilty of misconduct and a show cause notice dated 23-8-1985 was served as to why he should not be dismissed. That despite the representation of the petitioner, vide order dated 23-4-1986, the petitioner was dismissed from the service. That the petitioner challenged the said order of dismissal by raising an industrial dispute and a Reference was made to the Labour Court, Ahmedabad being Reference (LCA) no.542/1987. That the learned Presiding Officer heard the Reference and relying on the material produced before him passed the impugned order and judgment.

3. It may be noted that on account of the said accident a police case was also filed against the petitioner in the Court of learned J.M.F.C., Modasa being Criminal Case no.1274/1985. That vide judgment and order dated 17-1-1986, the petitioner was acquitted in respect to the charge of offences made punishable under Secs.279 and 304A of the Indian Penal Code. That the material of said criminal case and the judgment was relied on before the Presiding Officer, Labour Court, when the Reference was heard. It appears from the record that the learned Presiding Officer has invoked the provisions of Section 11-A of the Industrial Disputes Act, 1947 and has directed the respondent to reinstate the petitioner on the original post without backwages.

4. Learned Advocate Shri B.B. Naik appearing on behalf of the petitioner has assailed the impugned award

Annexure "B" by contending that learned Presiding Officer, Labour Court has given contradictory finding and has not given any reasons for not allowing the backwages. It is submitted on behalf of the petitioner that by following the judgment of this High Court in the matter of GUJARAT STATE ROAD TRANSPORT CORPORATION, AHMEDABAD VS. RUPSINH VEGHJI RATHOD, 1985 LAB IC 1095, the Labour Court has set aside the finding of Enquiry Officer regarding misconduct as petitioner is acquitted by the criminal Court. However, the Labour Court has committed an error by refusing the backwages despite there being evidence on record that the petitioner workman was not gainfully employed pending the enquiry and proceedings before the Labour Court. The Labour Court has construed the alternative submission urged on behalf of the workman and has deprived the workman of the benefit of full backwages. Shri Naik has submitted that in the absence of any adverse antecedent if the finding of misconduct is set aside, the Labour Court ought to have reinstated the workman with full back wages.

6. As against that, learned Advocate Mr. H.C. Raval appearing for the respondent has heavily relied upon the observations made in the matter of DIVISIONAL CONTROLLER KSRTC, RAICHUR VS. RAJA ALI, reported vide (2000) (85) FLR 755, and has urged that on account of said accident, the respondent-Corporation has to pay compensation to the extent of Rs.45,775/- to the heirs of the deceased boy who died in the accident. In the light of the said fact, Mr. Raval supported the judgment and award and urged that the petition should be dismissed.

7. It would be pertinent to note that the learned Presiding Officer, Labour Court, while passing the impugned order has followed the decision rendered by this Court in the case of RUPSINH (Supra) wherein it is held that if the criminal Court has construed the evidence and has concluded that accused was not negligent or rash while driving the bus at the time of accident, the finding given by the Enquiry Officer on the same set of facts holding the driver guilty for the misconduct of negligence could not be sustained. That the Labour Court has rightly set aside the finding in consideration of judgment rendered by the criminal Court wherein the petitioner is acquitted on merits. However, if the finding of Enquiry Officer in respect to misconduct is set aside, the imposition of punishment is also required to be set aside, and as such, there cannot be a question to invoke the provisions of Section 11-A of the Industrial Disputes Act, 1947 to substitute the lesser punishment.

8. It is also necessary to note that the observations made by the High Court of Karnataka in the case of RAJA ALI (Supra) referred to and relied upon on behalf of the respondent have no application to the facts involved in the present matter because in the said case the High Court of Karnataka having perused the judgment and evidence of criminal Court found that accused was given benefit of doubt, and as such, has given independent finding on the basis of evidence that accused-workman was careless if not negligent or rash as charged before the criminal Court. That the High Court in consideration of said material has imposed punishment by way of holding that workman should be paid backwages to the extent of 25%. Furthermore, the submission urged on behalf of the respondent that the respondent had to make payment of compensation to the heirs of deceased boy cannot be treated as relevant factor because the finding of misconduct itself is set aside, and as such, there was no question before the Labour Court to decide appropriate punishment. The Labour Court appears to have accepted the submission urged on behalf of the workman and relying on the same has invoked the provisions of Section 11-A of the Act and has passed the impugned order which is contradictory to the finding given by the Labour Court itself.

That once the Labour Court has come to the conclusion that finding of Enquiry Officer could not be sustained, there was no question of imposing punishment on the workman and in the facts and circumstances of the case, when workman was not gainfully engaged pending the enquiry and further other proceedings, deprivation of backwages to the workman would be undue punishment which deserves to be set aside.

9. On the basis of the aforesaid discussion, the petition is allowed. Part of the impugned order disallowing the backwages to the present petitioner is hereby quashed and set aside. The respondent-Corporation is directed to pay the backwages from the due date till the period for which the petitioner is entitled to the same with running interest at the rate of 6% per annum. Rule to that extent is made absolute.

(A.K.Trivedi,J.)
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